

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

December 22, 1992
AO-92-34

Ms. Janet Stavnezer
352 Spring Street
Shrewsbury, MA 01545

Re: Distributing Leaflets

Dear Ms. Stavnezer:

This letter is in response to your letter of October 20, 1992 requesting an advisory opinion as to whether you and your fellow campaign workers could distribute certain leaflets.

You have stated that you and your fellow campaign workers wish to distribute, on state property, outside the University of Massachusetts Medical School ("UMASS"), leaflets which support a candidate for political office. You further stated that the leaflets say at the bottom that the campaign is a grass roots campaign and provide a telephone number and address if a person would like to help.

As described in your letter, the proposed activity would not, in the Office of Campaign and Political Finance's ("Office") opinion, violate campaign finance law under various assumptions. ¹ Since the Office does not have a copy of the leaflet your organization wishes to distribute, it is difficult to further assess the situation. Thus, this advisory opinion will set out issues which you and your fellow campaign workers should consider before distributing leaflets.

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1. For the purpose of this opinion, I assume that (a) there is a political committee duly registered pursuant to M.G.L. c.55, (b) the committee is in compliance with c.55 and (c) the committee has properly disclosed, in campaign reports, the financial activity surrounding how the leaflets were purchased or acquired.

1. Public Employees Prohibited From Fundraising

M.G.L. c.55, s. 13 prohibits political fundraising by public employees who are "employed for compensation", a term which the Office has interpreted broadly. See OCPF-IB-92-01. Section 13 provides, in pertinent part, that:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purposes whatever...

Thus, if you or your fellow campaign workers are employed for compensation by the Commonwealth or one of its subdivisions, you would be considered a "public employee". You could not hand out leaflets which ask for funds to support a campaign nor could you verbally or otherwise ask for funds while handing out leaflets which do not contain a request for funds.

2. Solicitation in a Public Building

M.G.L. c.55, s.14 may also be relevant to your activities. Section 14, provides, in relevant part, that "no person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for the purposes set forth in section thirteen." ² In the OCPF's opinion, section 14 applies to actual buildings and to any part of such buildings occupied for state county or municipal purposes (whether inside or outside of the building) which is integral to the building or the work of the building. See AO-91-19. See also AO-88-10 (Section 14 prohibition applicable to immediate surroundings of a state building.)

2. As noted in section 1 above, the purposes set forth in section 13 are "for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever..." . See OCPF-IB-92-01 for a discussion of "political purpose."

3. Equal Access

The Office has advised that limited governmental resources may be utilized for political purposes as long as equal access was given to each side. See also Anderson v. City of Boston, 376 Mass. 178 (1978). For example, in AO-90-02 the Office advised that areas within public buildings which are accessible to the public may be used by the opponents and the proponents of an initiative petition provided each side was given equal access to such areas. Assuming you and your campaign workers were in compliance with the other provisions of campaign finance law noted above, if UMASS afforded you an opportunity to utilize their resources to distribute leaflets, then UMASS must allow your opponents and members of the general public, the same opportunity on the same terms and conditions.

4. Miscellaneous Guidelines for People in the Service of the Commonwealth

You should also be aware of a few other provisions affecting public employees. Specifically, Section 15 of M.G.L. c.55 prohibits persons in the service of the Commonwealth from giving, to other persons in such service, money or other valuable thing to promote a political objective. Section 16 provides that no person in the public service shall be under obligation to contribute to any political fund or to render any political service. And section 17 provides that no employee of the Commonwealth shall discharge, promote, or degrade another employee for giving or neglecting to make a contribution to a political purpose.

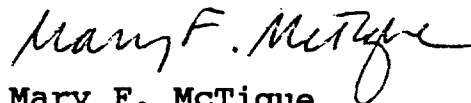
In conclusion, for campaign finance purposes, merely providing a telephone number and address for persons interested in helping your organization does not constitute a direct or indirect solicitation of money or any other thing of value. If you are not involved in campaign fundraising, then any restriction on your right to distribute leaflets on public property must be weighed against your First Amendment rights, an issue not subject to OCPF's jurisdiction. I would suggest contacting the Secretary of State's Elections Division regarding your rights in this area, as well as UMASS to inquire as to their specific policies regarding the distribution of leaflets. If you are involved in campaign fundraising of any sort, then you and your fellow campaign workers need to evaluate your actions in accordance with the above guidelines.

For your information and convenience I have enclosed a booklet entitled "A Guide to Political Activity For State, County and Municipal Employees" as well as OCPF-IB-92-01.

This opinion has been rendered solely on the basis of the representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact the Office should you have additional questions about this or any other campaign finance matter.

Very truly yours,

A handwritten signature in cursive script, reading "Mary F. McTigue". The signature is written in dark ink and is positioned above the printed name and title.

Mary F. McTigue
Director